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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/742,346	12/19/2003	Robert Falotico	CRD-5062 USANP	6421

27777 7590 04/01/2011

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EXAMINER	
HELM, CARALYNNE E	
ART UNIT	PAPER NUMBER
1615	

NOTIFICATION DATE	DELIVERY MODE
04/01/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/742,346	FALOTICO ET AL.	
	Examiner	Art Unit	
	CARALYNNE HELM	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 March 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/17/11*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Note to Applicant: References to paragraphs in non-patent literature refer to full paragraphs (e.g. 'page 1 column 1 paragraph 1' refers to the first full paragraph on page 1 in column 1 of the reference).

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 17, 2011 has been entered.

Election/Restrictions

To summarize the current election, applicants elected group I, without traverse.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The four factual inquiries of Graham v. John Deere Co. have been fully considered and analyzed in the rejections that follow.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-7 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Tseng et al. (previously cited) in light of Windecker et al. (previously cited) and Roorda et al. (previously cited).

In claim 1, Tseng et al. teach a stent (an implantable structure), containing drug depots capable of controllably delivering one or more histone deacetylase (HDAC) inhibitors which inhibit smooth muscle cell proliferation (see paragraph 37; instant claims 6-7). Specifically, the HDAC inhibitor depot is envisioned as a coating on the stent (see paragraph 118; instant claim 6). In addition, Tseng et al. also teach that the disclosed device delivering the HDAC inhibitors is particularly beneficial in the treatment of restenosis, implying that the HDAC inhibitors would be present at therapeutic dosages within the stent device (see paragraph 37; instant claim 6). Tseng et al. go on to further describe the HDAC inhibitor included on or in the stent body as trichostatin A, abbreviated as TSA (see claims 12-14 and paragraph 15 lines 1-2; instant claim 9). Tseng et al. teach the effectiveness of TSA at 50 nano molar on the inhibition of smooth muscle cell proliferation (see paragraph 168; instant claim 6). Also taught by Tseng et al. is the inclusion of an additional pharmaceutical agent or agents, such as anti-inflammatory and anti-proliferative agents, where an exemplary agent includes rapamycin as a preferred option (see paragraph 134 and claims 2 and 3; instant claim 6). Further, Tseng et al. teach that the drug depots include one or more polymers to controllably release the drug(s) and that an ordinarily skilled artisan would be well capable of selecting depot configurations suitable for treating restenosis (see claim 6 and paragraphs 109 and 142). Tseng et al. do not specifically describe a topcoat affixed to the polymer-drug depot coating on the stent device.

Windecker et al. teach that rapamycin (also known as sirolimus) has powerful anti-proliferative and anti-migratory drug properties on vascular smooth muscle cells

(see page 1089 column 1 paragraph 1 lines 1-5; instant claim 10). In addition, Windecker et al. go on to teach that its incorporation into biocompatible polymers, suitable for stent based drug delivery, has been successful (see page 1089 column 1 paragraph 1 lines 5-7; instant claim 10). Further, this drug is utilized for the treatment of restenosis.

Roorda et al. teach a drug eluting stent with a drug-polymer base layer and an additional polymer topcoat (see paragraph 12 lines 1-4; instant claim 6). Anti-proliferative compounds as well as inhibitors of smooth muscle cell proliferation are envisioned drugs (see paragraph 33). Roorda et al. go on to teach that the topcoat serves as a rate limiting membrane to further control the release of drug from the device (see paragraph 12 lines 8-11; instant claim 6). Roorda et al. teach that these coating layers are composed of polymers and that both polyacrylates alone and in conjunction with fluorinated polymers are considered suitable varieties of polymer (see paragraph 28 and 29 lines 1-3; instant claim 6). Two fluorinated polymers are envisioned and they include poly(vinylidene fluoride-co-hexafluoro propene) (also known as poly(vinylidenefluoride-co-hexafluoropropylene)) (see paragraph 28). Roorda et al. explicitly envisions PVDF-HFP as a polymer in the drug (see claim 9). This polymer meet the limitations of the fluoropolymer in the claimed first polymeric material. Further, Roorda et al. highlight poly(n-butyl methacrylate) as a particular polyacrylate that is suitable for fabricating either the drug-polymer layer or the topcoat and several examples are also provided with the polymer as a topcoat (see paragraph 17 and examples 17-19).

One of ordinary skill in the art at the time of the invention would also have found it obvious to couple the device of Tseng et al. with the teachings of Windecker et al. to select rapamycin as the additional pharmaceutical agent from the set taught by Tseng et al. because of its known ability to treat pathological phenomenon that characterize restenosis (e.g. smooth muscle cell proliferation and migration). Although a single example is not provided by Tseng et al. with both drugs in a coating with a polymer, it would have been obvious to one of ordinary skill in the art at the time of the invention to follow the explicit teachings of Tseng et al. and include TCA at about 50 nanomolar and rapamycin with a polymer in a stent (an implantable device) coating in order to treat the occurrence of restenosis, as taught. This coating qualifies as the instantly claimed "basecoat layer." In addition, the term "affixed" is interpreted as “applied to” or “in contact with” based upon the description in the instant disclosure of how a coating or therapeutic becomes “affixed” to the device surface. Thus, the coating of Tseng et al. in view of Windecker et al. is affixed to the stent surface and both TCA and rapamycin are releasably affixed to this device since the polymer provides for their controlled release.

In addition, since both Roorda and Tseng et al. teach stents with polymeric matrices that provide for the controllable release of a combination of drugs to address restenosis and both contemplate antiproliferative compounds along with smooth muscle cell proliferation inhibitors as drugs, one of ordinary skill in the art at the time of the invention would have found it obvious to utilize the particular polymers and layer configuration as taught by Roorda et al. in the invention of Tseng et al. in view of Windecker et al. as the application of a known technique to a similar device to produce

the same result. Since Roorda et al. explicitly envision PVDF-HFP as a polymer in the drug layer and generally teach PBMA as a topcoat, it would have been obvious to select these polymers for these particular layers based upon this guidance by Roorda et al. (see claim 9 and paragraph 17). This combination then results in a stent with a basecoat layer that includes poly(vinylidenefluoride-co-hexafluoropropylene), TCA, and rapamycin as well as a topcoat layer composed of poly(n-butyl methacrylate). Each of these layers is separate and distinct where the topcoat layer is affixed or in contact with the surface of the basecoat layer.

Applicants teach that the presence of rapamycin (sirolimus) with trichostatin A may potentiate each other's anti-restenotic activity (see instant specification page 9 lines 21-25). According to MPEP 2112.01, "A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present." This treatment results from In re Spada, which states that, "Products of identical chemical composition can not have mutually exclusive properties." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Since Tseng et al. in view of Windecker et al. and Roorda et al. make obvious the claimed device with trichostatin A and rapamycin present in combination, it also would have the claimed potentiation effect between the two actives. Thus, claims 6-7 are obvious over Tseng et al. in view of Windecker et al. and Roorda et al.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng et al. in light of Windecker et al. and Roorda et al. as applied to claims 6 and 7 above, and further in view of Carter et al. (previously cited).

Tseng et al. in view of Windecker et al. and Roorda et al. make obvious a stent with a basecoat layer that includes poly(vinylidenefluoride-co-hexafluoropropylene), TCA, and rapamycin as well as a topcoat layer composed of poly(n-butyl methacrylate), where the basecoat is affixed to the device surface and the topcoat is affixed to the basecoat surface. The modified Tseng et al. reference also teaches that the reason for incorporating the TCA within the stent device is for addressing the issue of restenosis following stent implantation (see Tseng et al. paragraphs 29, 31, and 37). Tseng et al. modified by Windecker et al. and Roorda et al. does not specifically teach stent grafts containing the layered coatings with controllable release capabilities.

Carter et al. teach that stents are commonly used to clear obstructions and to repair damage to vascular tissue (see paragraph 39 lines 2-5). Carter et al. go on to teach that stent grafts are a common name for a modification of stents where a flexible covering is attached to the stent frame (see paragraph 39 lines 10-12) and that the implantation process for stents, as a whole, carries with it the risk of causing restenosis (see paragraph 50 line 9). Since stent grafts are a modification of stents and also subject to post-implantation restenosis, it would have been obvious to one skilled in the art at the time of the invention to further modify the invention of Tseng et al. in view of Windecker et al. and Roorda et al., by applying their layered polymer coating configuration containing trichostatin A at about 50 nanomolar and rapamycin to a stent-

graft device. Therefore, instant claim 8 is obvious over Tseng et al. in light of Windecker et al., Roorda et al., and Carter et al.

Response to Arguments

Applicants provided an information disclosure statement which has been considered, but no additional arguments concerning the claims. Therefore the reply to the set of arguments provided February 2, 2011 that was detailed in the Office action mailed February 18, 2011 is reiterated.

Conclusion

No claim is allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARALYNNE HELM whose telephone number is (571)270-3506. The examiner can normally be reached on Monday through Friday 9-5 (EDT).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Caralynne Helm/
Examiner, Art Unit 1615

/Juliet C Switzer/
Primary Examiner, Art Unit 1634